

LEGAL UPDATES

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Services

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Trade Agency Launches Investigation on Solar Cells and Modules

On May 23, 2017, the U.S. International Trade Commission (ITC) initiated a Section 201 trade remedies case on crystalline silicon photovoltaic (CSPV) solar cells and modules. The case could affect importations of these products from every country in the world.

Suniva Inc., a U.S. producer of solar cells, filed a petition with the ITC on April 26, 2017, requesting relief in the form of an established minimum price for solar modules imported into the United States, as well as imposition of an additional four-year tariff on all imported CSPV cells and modules.

The ITC took almost a month to review the filing to consider whether it met the legal requirements for "standing," i.e., whether Suniva was representative of the U.S. industry. The ITC also received clarification of Suniva's position on country of origin for purpose of the case, as well as the definition of the products covered. While the initial petition was filed April 26, the ITC did not deem it to be properly filed until May 17, when all amendments were received. (Read our previous alerts [here](#) and [here](#).)

As we predicted earlier, the case will move along quite quickly now. Of great significance, the ITC has stated in its initiation notice that parties must file an entry of appearance within 21 days of publication of the notice in the Federal Register. As of May 24, that notice had not yet been published, but will be soon. Furthermore, comments on the proposed questionnaires are due May 26, so companies should take action if they wish to make such comments. In past cases, we have found that such comments often are critical to ensuring that the ITC obtains the best information available.

The ITC announced the following schedule:

May 26, 2017 – Comments of parties on draft questionnaires due

June 29, 2017 – Questionnaires from all parties due back to ITC

August 1, 2017 – Prehearing report due from ITC

August 8, 2017 – Prehearing briefs on injury due from parties

August 15, 2015 – ITC hearing on injury

August 22, 2017 – Post-hearing briefs on injury due from parties

September 22, 2017 – Proposed vote by ITC on injury

September 27, 2017 – Prehearing briefs on remedy due from parties

October 3, 2017 – ITC hearing on remedy

October 10, 2017 – Post-hearing briefs on remedy due from parties

October 31, 2017 – Vote of ITC on remedy

Following the October 31 vote, the case will go to President Trump, who will accept or modify the remedy recommendations of the ITC. The president may act as soon as 60 days after receiving the recommendations, or slightly more if supplemental information is required from the ITC. In short, we expect relief to be effective toward the end of 2017 or very early in 2018.

What This Means to You

Companies affected by this case should hire counsel in the near future to develop their strategies to oppose the remedies being requested. Efforts may include coordinating efforts with the Solar Energy Industry Association (SEIA), making companies' views known to representatives on Capitol Hill and at the state level, filling out ITC questionnaires, preparing briefs for the ITC, testifying at the hearings and similar actions. Now that the ITC has decided that Suniva has standing to bring this case, the work to be done is substantial and critical to the future of the solar energy industry in the United States.

Contact Us

For more information on how this case may affect your business, please contact Jeffrey S. Neeley, a member of Husch Blackwell's International Trade & Supply Chain team, or John C. Crossley, James G. Goettsch or Cacki Jewart, members of Husch Blackwell's Energy & Natural Resources team.